SUPREME COURT, JOINT BENCH
Hon'ble Justice Mr. Abdul Aziz Muslim
Hon'ble Justice Mr. Shreekanta Paudel

ORDER

Case: Certiorari and Mandamus, etc.
081-WO-0455

Bivek Chaudhary, son of Neval Chaudhary and grandson of the late Maksudan Chaudhary, having a household in Ward No. 2, Nagarain Municipality, Dhanusha District, at present residing in Ward No. 1, Mahalaxmi Municipality, Lalitpur District, a law student studying at the Faculty of Law, Tribhuvan University, Nepal Law Campus 1	**Petitioner**
Versus	
Ministry of Home Affairs, Singhadurbar, Kathmandu ..... 1 Nepal Police Headquarters, Kathmandu ..... 1 Kathmandu Valley Traffic Police Office, Kathmandu..... 1	**Respondents**

Pursuant to Articles 46 and 133(2) and (3) of the Constitution of Nepal, the brief facts and the order of the present petition filed before this Court are as follows:-

FACTS

1. I, petitioner Bivek Chaudhary, am a Nepali citizen who had a household in Ward No. 2, Nagarain Municipality, Dhanusha District and who has been residing in Ward No. 1, Mahalaxmi Municipality, Lalitpur District. I, petitioner Bivek Chaudhary, am a law student studying in the fifth semester of the ten-semester Bachelor of Arts and Bachelor of Laws (B.A. LL.B.) programme run at Nepal Law Campus, Exhibition Road, Kathmandu, under the Faculty of Law, Tribhuvan University. I, the petitioner, am a good citizen who holds the view that the fundamental rights of every citizen of Nepal must be ensured and that every citizen must be able to live with dignity (the right to live with dignity) and to enjoy the right to freedom, and I am also a Nepali citizen who holds a two-wheeler driving licence. Since there is no other alternative remedy available to have annulled and to stop the practice of traffic police unlawfully taking into their control drivers' vehicle ownership certificates and driving licences, I am entitled to file a writ before this Court. On Friday, 2081.04.04, between 12:00 noon and 1:30 p.m., I, the petitioner, violated the traffic light situated on the main line of the road leading from Babarmahal to the bridge at Bijuli Bazar, whereupon the traffic police stopped my vehicle and fined me. After imposing the fine, the traffic police also took my driving licence into their control. I, the petitioner, am also an aggrieved party with standing to bring the present writ petition.

2. Section 164 of the Vehicles and Transport Management Act, 2049 (1993) contains a provision empowering a transport inspector or police officer to impose an immediate penalty. Section 160 contains a provision for punishment, but neither the Vehicles and Transport Management Act, 2049 nor the Vehicles and Transport Management Regulations, 2054 confers upon the traffic police or the police any power to take into their control a driving licence or a vehicle

ownership certificate. Any power or act of taking a driving licence into control must be conferred either by substantive law or by procedural law; the traffic police or the police have no authority to take a driving licence into control upon violation of a traffic rule. For the traffic police or police to take a licence into control without legal basis is a violation of the rule of law. No one has authority to act contrary to law, and no organ or body of the State has licence to misuse its own authority so as to cause hardship and suffering to the public. In cases of violation of traffic rules, because the traffic police do not enter into their software, within twenty-four hours, the chit issued and the driving licence or vehicle registration certificate taken into control, drivers from outside the Valley who pay the fine online immediately are still unable to obtain their licence back immediately; as a result, all drivers have continued to suffer hardship.

3. Even after paying the fine when my driving licence was taken into control on 2081.04.04, I obtained my licence back only twenty-four hours later, and since it is certain that the practice of taking other drivers' driving licences into control has continued and will continue to be carried out in future as well, I have prayed that if any unlawful decision has been made by the respondents regarding the traffic police's or police's practice of taking drivers' driving licences into control, such decision be quashed by an order of certiorari, and that a writ of mandamus and such other appropriate order or directive as may be necessary be issued in the name of the respondents directing that the traffic police or police shall not, and shall not cause to be, taken into control any person's driving licence or vehicle ownership certificate on account of violation of traffic rules. I further prayed, on the basis of convenience and balance, that until final disposal of this writ petition, an interim order be issued under Rule 49 of the Supreme Court Rules, 2074, directing that, except for the fine

prescribed by law, no original documents of any driver, including the driving licence or vehicle ownership certificate, shall be taken into control on account of violation of traffic rules. This is the writ petition submitted before this Court by Bivek Chaudhary.

4. What is the matter herein? Why should the order sought by the petitioner not be issued? If the order ought not to be issued, submit a written reply, together with the grounds and reasons therefor, through the Office of the Attorney General within fifteen days, excluding the time required for travel, from the date of receipt of the notice. A copy each of this order and of the writ petition shall be kept along with the notice, and a notice of the time period shall be issued in the name of the respondents; upon receipt of a written reply within the time limit, or after the expiry of the period, the matter shall be submitted in accordance with the Rules.

Having considered the matter of the interim order also sought in the present petition, since the subject matter of the claim appeared to be of a nature requiring interpretation at the stage of the final order, this Court held, by order dated 2081.07.08, that it was not necessary to issue an interim order at this stage.

5. It appears that the claim of the writ petitioner, respondent Bivek Chaudhary, relates to the traffic police's inspection carried out under the Vehicles and Transport Management Act, 2049, the Vehicles and Transport Management Regulations, 2054, and other prevailing laws, and to the causing of unnecessary trouble and hardship to persons contrary to law in that regard. It is stated that, in addition to regulating the operation and efficient management of transport and vehicles, checking driving licences, managing conductors, cases of carrying passengers beyond seating capacity in public vehicles, vehicle insurance, and ensuring safe travel, the traffic police offices have also been conducting public-awareness programmes and direct

orientation programmes for passengers, drivers and conductors. Since this Ministry has not taken any action or decision that infringes the petitioner's civic rights, the writ petition, filed making this Ministry a respondent without any objective basis, reason or evidence, should be dismissed - this is the written reply submitted before this Court on behalf of respondent Government of Nepal, Ministry of Home Affairs.

6. Sub-section (1) of Section 164 of the Vehicles and Transport Management Act, 2049 provides that a transport inspector or police officer may impose an immediate penalty; sub-section (2) of the same section provides that where a person is unable to pay immediately the amount of fine imposed under sub-section (1) by a transport inspector or police officer, such person shall be given a chit to pay the amount to the concerned police office or authorised officer within twenty-four hours; and sub-section (3) provides that notwithstanding anything contained in sub-section (1), where, at the time an offence under sub-section (1) is committed, no officer of the rank of at least Assistant Police Inspector is present at the spot to impose the penalty, any police constable present at the spot shall record the offence committed and shall issue a chit directing that the fine amount be paid to the concerned police office within twenty-four hours. In accordance with these provisions of the Act, petitioner Bivek Chaudhary was, on 2081.04.04, charged and a twenty-four-hour chit bearing No. 16774 was issued against him for the offence of driving in violation of a traffic signal or signal, under Section 164(1)(a) of the Vehicles and Transport Management Act, 2049; and, in order to reduce traffic accidents, action has been taken against vehicle users who commit offences specified in the Act, in accordance with that very Act; the writ petition should therefore be dismissed - this is the written reply submitted before this Court on behalf of respondent Kathmandu Valley Traffic Police Office, Ramshah Path.

7. The traffic police regularly patrol and check vehicles for the prevention and reduction of traffic accidents, collect fines from drivers who violate traffic rules in accordance with the prescribed Act and Rules, run public-awareness programmes related to traffic, and coordinate and cooperate with concerned agencies for road safety. In order to maintain traffic discipline accordingly, the traffic police have been enforcing traffic rules by exercising the delegated authority conferred under the Vehicles and Transport Management Act, 2049. It appears that petitioner Bivek Chaudhary was, on 2081.04.04, charged and a twenty-four-hour chit bearing No. 16774 was issued against him for the offence of driving in violation of a traffic signal or signal, under Section 164(1)(a) of the Vehicles and Transport Management Act, 2049. The writ petition is liable to be dismissed and should be dismissed - this is the written reply submitted before this Court on behalf of respondent Nepal Police Headquarters, Naxal.

8. For the traffic police to take a driving licence into control without legal basis is an act in excess of jurisdiction (ultra vires). Section 164 of the Vehicles and Transport Management Act, 2049 grants the traffic police or inspector only the power to fine (Rs. 500 to Rs. 1,500) a driver who violates traffic rules. Nowhere in this section is power granted to take the driver's licence itself into control while imposing a fine or taking action. Section 164(2) of the Act provides only that, where a driver is unable to pay the fine immediately, a chit shall be given directing payment of the fine within twenty-four hours. What the law requires is the giving of a chit, not the retention of the licence. Where no section of the Vehicles and Transport Management Act confers power to take the licence itself into control for violation of traffic rules, doing so is contrary to law and an act beyond jurisdiction. This is the written debate note submitted before this Court by writ petitioner Bivek Chaudhary, praying that the practice

whereby the traffic police or police, acting beyond their jurisdiction, take drivers' driving licences into control be quashed by an order of certiorari, and that a writ of mandamus and such other appropriate order or directive as may be necessary be issued in the name of the respondents directing that the traffic police or police shall not, and shall not cause to be, taken into control any person's driving licence or vehicle ownership certificate on account of violation of traffic rules.

DECISION

1. In the present writ petition, listed on the daily cause list in accordance with the Rules and placed before the Bench for decision, petitioner Bivek Chaudhary, appearing on his own behalf, argued and it was heard that Section 164 of the Vehicles and Transport Management Act, 2049 contains no provision for taking a driving licence into control upon violation of traffic rules; that section grants the transport inspector or police officer only the power to impose an immediate fine for certain specified offences; nowhere is it stated that, for offences such as violation of a traffic signal, driving on the wrong side, driving under the influence of intoxicating substances, or carrying passengers beyond seating capacity, the licence itself may be taken into control or confiscated; since the petitioner's driving licence was taken into control and was obtained back only twenty-four hours later despite payment of the fine, and since the practice of taking other drivers' licences into control has also continued, he prayed that an order be issued directing that the original documents of drivers, including the driving licence or vehicle ownership certificate, shall not be taken into control.

2. It was also heard that the learned Deputy Government Attorney, Mr. Somkant Bhandari, appearing on behalf of the respondents, argued that the respondents have not taken any action or decision that

infringes the petitioner's civic rights; that action has been taken against the petitioner in accordance with the Vehicles and Transport Management Act, 2049 for violation of a traffic rule; and prayed that the writ petition be dismissed.

3. In this matter, I, petitioner Bivek Chaudhary, on Friday, 2081.04.04, between 12:00 noon and 1:30 p.m., violated the traffic light situated on the main line of the road leading from Babarmahal to the bridge at Bijuli Bazar, whereupon the traffic police stopped my vehicle and, after imposing a fine upon me, also took my driving licence into control, which I obtained back only twenty-four hours later; and since the practice of taking other drivers' driving licences into control has continued and is certain to continue in future as well, it appears that the principal claim of the petition is that, since the police have exercised authority in excess of what is granted by law and, exceeding their jurisdiction, have exercised authority they never possessed, the practice whereby the traffic police or police take drivers' driving licences into control ought to be quashed by an order of certiorari. It appears from the written reply that action was taken against the petitioner strictly in accordance with the Vehicles and Transport Management Act, 2049; that the traffic police performed a lawful act; that the petitioner's rights have not been infringed; and that the writ petition should therefore be dismissed.

4. In the writ petition containing the facts set out above, it has become necessary to decide the question of whether or not a driving licence may be taken into control upon violation of a traffic rule, and whether or not the order sought by the petition ought to be issued.

5. Turning to the decision, Section 164 of the Vehicles and Transport Management Act, 2049 is found to contain the following provision. “Immediate penalty by transport inspector or police - (1) Notwithstanding anything contained elsewhere in this Act, a transport

inspector, or an officer of at least the rank of Assistant Police Inspector, may immediately impose a fine of Rs. 500 for a first offence, Rs. 1,000 for a second offence, and Rs. 1,500 for a third or subsequent offence, in respect of the following offences:-

(a). Driving a vehicle in violation of a traffic signal or signal.

(b). Stopping a vehicle at a place or time where stopping is prohibited.

(c). Turning a vehicle or sounding a horn at a place where such act is prohibited.

(d). Driving a vehicle on the wrong side of the road.

(e). Driving a vehicle against the designated direction on a one-way road.

(f). Driving a vehicle that is not in a roadworthy condition.

(g). Driving a vehicle at a speed exceeding the prescribed limit.

(h). Driving a vehicle at night without lights.

(i). Driving a vehicle while under the influence of an intoxicating substance.

(j). Parking a vehicle in a public place in a manner that obstructs others.

(k). Driving a vehicle at a place or time where driving is prohibited.

(l). Driving a vehicle without a number plate.

(m). Driving a vehicle exceeding the prescribed weight limit at a place where a weight limit has been fixed.

(n). Driving a vehicle without wearing a seatbelt or a helmet.

(o). Driving a vehicle carrying persons or goods in excess of the prescribed limit.

(p). A public-vehicle driver refusing to take a passenger.

(q). Driving a vehicle while charging fare in excess of the prescribed rate.

(r). Driving a vehicle negligently.

(s). Operating a public vehicle without a route permit.

(t). Driving a vehicle without carrying the driving licence."

6. Having regard to the above legal provision, it does not appear that the law confers upon the traffic police the power to take into control, or to confiscate, a driver's driving licence or other vehicle-related documents on account of violation of a traffic rule. Section 164 is found to grant the traffic police only the power to impose an immediate fine on a driver who violates a traffic rule and, where the fine is not paid, to issue a chit. Since it does not appear even from the respondent traffic police's written reply that any decision was made to take into control the driving licence, blue book, or key of the petitioner or of any other driver, no basis is found for issuing an order of certiorari as sought by the petition.

7. It does not appear that the Vehicles and Transport Management Act, 2049 contains any legal provision empowering the traffic police to take into control the driving licence, blue book, key, or other documents of a vehicle. In such circumstances, it appears to be the claim that the petitioner's driving licence was taken into control and returned only after twenty-four hours, and that the documents of other drivers have similarly been taken into control. It does not appear from the respondents' written reply that they have stated that the driving licence was not taken into control as claimed in the petition. Only the authority granted by law may be exercised by the empowered body. Every act performed by a public body must be in accordance with law. Where a person is unable to pay immediately a fine imposed under Section 164 of the Vehicles and Transport Management Act, 2049, the law provides only that such person be given a chit to pay the fine within twenty-four hours. It is not a legal provision that authorises the taking into control of the licence or other

documents. Indeed, the launch of the citizen app developed by the Government of Nepal has made it possible to store one's driving licence digitally, to access it, and to pay traffic fines - also known as e-chalan or the digital chit[1]. This has removed the need to carry a physical copy of the driving licence and has simplified the process of managing traffic fines. However, where the law does not confer upon the police the power to confiscate or take into control a driver's licence for violation of a traffic rule, doing so amounts to an excess of power. Where a matter beyond one's own jurisdiction is drawn in and acted upon, it amounts to an excess of jurisdiction. In the similar case of Mashud Khan and others v. Armed Police Force Headquarters and others, a certiorari case (NKP 2076, Issue 12, Decision No. 10395), this Court has held that an order of certiorari is issued to quash acts or proceedings carried out by a court, tribunal, government or public official, or a body constituted under law, that involve a jurisdictional error, so as to keep such a body within the bounds of its authority. In Yogendra Giri v. Ministry of Health and Population and others, a certiorari case (NKP 2072, Issue 8, Decision No. 9458), it has been held that where a person without authority assumes jurisdiction, or, though possessing jurisdiction, acts beyond the limits of that jurisdiction, such a decision is invalid and void. In Karisingh Bhul and others v. Public Service Commission, Central Office and others, a certiorari case (NKP 2073, Issue 3, Decision No. 9558), this Court has held: “Every organ of the State must be able to demonstrate the legal basis for every act and decision made by it; where it fails to do so, such acts and decisions cannot attain validity.” Likewise, in Bishnu Prasad Poudel and others v. Office of the Prime Minister and Council of Ministers and others, a writ petition (NKP 2073, Issue 7, Decision No. 9634), it has been held: “The acts and decisions of every organ of the State must be carried out lawfully. The legal basis and justification

[1] https://traffic.nepalpolice.gov.np/notices/63/, published on the website on 2081.09.16.

for the acts and decisions carried out by such a body must also be established. Acts and decisions for which legal basis and justification are not established cannot attain validity."

8. Since Section 164 of the Vehicles and Transport Management Act, 2049 grants the traffic police only the power to impose a fine, exercising authority beyond what the law prescribes to take a driving licence into control results in an undue restriction on a person's freedom of movement and freedom to carry on his or her profession or occupation. Such an act runs contrary to the rule of law. Article 18 of the Constitution of Nepal guarantees that all citizens shall be equal before the law and that no one shall be denied the equal protection of the law; the unlawful taking of a driver's licence into control by the police accordingly also affects the right to equal protection under Article 18 of the Constitution of Nepal. In a State governed by the rule of law, law is supreme. Any act affecting a person's rights or freedoms must be based on clear legal authority. What cannot be done directly may also not be done indirectly. In the absence of any legal provision permitting the taking into control of a driving licence, blue book, or vehicle key as a consequence of violation of a traffic rule, if anybody or official does so, such an act also affects the dignity of the individual concerned; therefore, in such circumstances of violation of a traffic rule, the taking into control of similar documents including the driving licence can in no way be regarded as just, and the taking of the petitioner's licence and similar documents into control is accordingly found to be unlawful.

9. Therefore, on the basis of the grounds and evidence discussed above, since it does not appear that the respondent Traffic Police Office has made any decision regarding the taking into control of drivers' driving licences, no ground is found to exist for issuing an order of certiorari as sought by the petition, and the writ petition is accordingly held to

be dismissed. Nevertheless, the Court ought not to sanction arbitrariness on the part of a public official; it is necessary to exercise the requisite control in this regard. Where arbitrariness is allowed to flourish, the mandate of a law-governed State is stifled. Since it appears that the traffic police have been taking into control the driving licence, blue book, key and other documents of the petitioner and of other persons in circumstances where the law does not permit such control, such arbitrary and unlawful conduct is found to require restraint. A directive order is therefore hereby issued in the name of the respondents directing that they shall not, and shall not cause to be, taken into control the driving licence, blue book and other documents, and the key, of any vehicle driver, in a manner contrary to the Vehicles and Transport Management Act, 2049. Notice of this order shall be given to the respondents through the Office of the Attorney General. An electronic copy of the order shall be entered into the Case Management System, the filing register shall be closed accordingly, and the case file shall be handed over to the Records Section in accordance with the Rules.

Shreekanta Paudel
Justice

I concur with the above opinion.
Abdul Aziz Muslim
Justice

Assisted in the preparation of the judgment:
Bench Officer (Under-Secretary): Sitaram Khadka
Computer Operator: Bikesh Guragain

Done on the 6th day of the month of Poush, 2082 B.S., Monday (Roj 1), auspicious.....